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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/697,363	10/30/2003	Wayne H. Hanson	1-24778	7882
4859 7590 04/30/2007 MACMILLAN SOBANSKI & TODD, LLC ONE MARITIME PLAZA FIFTH FLOOR 720 WATER STREET TOLEDO, OH 43604-1619			EXAMINER EDELL, JOSEPH F	
			ART UNIT 3636	PAPER NUMBER
			MAIL DATE 04/30/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/697,363

Applicant(s)

HANSON ET AL.

Examiner

Joseph F. Edell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 April 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 3,4,6,14,15 and 20-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 3,4,6,14,15 and 20-25 is/are rejected.
- 7) ☒ Claim(s) 26 and 27 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 02 April 2007 has been entered.

### ***Claim Objections***

2. Claim 25 is objected to because of the following informalities: "back support member" (lines 2-3) should read --seat back-- as no back support member is recited in claim 22. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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4. Claims 3, 4, and 20-23 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,488,332 B1 to Markwald.

Markwald discloses a seating system that includes all the limitations recited in claims 3, 4, and 20-23. Markwald shows a seating system having a base 4 (see Fig. 1), a seat tray 7, a sliding mechanism 17 configured to mount the seat tray and limits sliding movement of the seat tray to substantially horizontal movement, a seat back 8 pivotally mounted relative to the seat tray at a seat back pivot point, a leg support 10 pivotally mounted with respect to the seat and depending from the seat tray, and a biasing element 14 connected relative to the base and the seat tray and configured to store energy and have a damping effect upon application of force by a user to move the seat tray forward and a configured to release energy when the user relaxes to automatically move the seat tray rearward wherein the sliding mechanism is configured with sufficiently low friction to enable the user to experience extension tone with little resulting resistance to the forward movement of the seat tray and little resulting resistance to pivoting of the leg support, and the seating system is configured for forward movement of the seat tray and pivoting of the leg support caused by tone extension of the user without requiring manual operation (see column 4, lines 3-36).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 6, 14, 15, 24, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Markwald in view of U.S. Patent No. 327,775 to Dodge.

Markwald discloses a seating system that is basically the same as that recited in claims 6, 14, 15, 24, and 25 except that the seat back lacks a back support member moving downward and a locking mechanism, as recited in the claims. See Figures 1 and 2 of Markwald for the teaching that the seat back is connected to a back support member pivotally connecting the seat back to the base. Dodge shows a seating system similar to that of Markwald wherein the seating system has a base *E* (see Fig. 1), a seat back *A* connected to a back support member *H* such that downward movement of the back support member in a substantially vertical direction causes the seat back to pivot at the seat tray to recline the seat back, and a locking mechanism supported with respect to the base. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the seating system of Markwald such that the seat back is connected to a back support member wherein downward movement of the back support member in a substantially vertical direction with respect to the base causes the seat back to pivot at the seat tray to recline the seat back and causing the seat tray to slide forward with respect to the base, and a locking mechanism

supported with respect to the base. One would have been motivated to make such a modification in view of the suggestion in Dodge that the seat back configuration provides a slideably adjustable seat back that is removably coupled to the base.

7. Claims 3, 4, 20-23, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,928,957 to Lanier et al. in view of U.S. Patent No. 6,416,447 B1 to Harmon.

Lanier et al. disclose a seating system that is basically the same as that recited in claims 3, 4, 20-23, and 25 except that the seat back is not specified as pivotally mounted to the seat tray, as recited in the claims. See Figures 2, 6, and 7 of Lanier et al. for the teaching that the seating system has a base 22 *capable* of movement on wheels, a seat tray 44,49, a sliding mechanism 40 configured to mount the seat tray *capable* of forward and rearward sliding movement in a single plane with respect to the base in a low friction manner, a seat back 46 mounted relative to the seat tray at a seat back pivot point positioned to be at the anatomical hip pivot point of the seated user, a leg support 50,52 pivotally mounted with respect to the seat tray and depending from the seat tray, and a biasing element 82 connected relative to the base and the seat tray *capable* of biasing the seat tray relative to the base and configured to store energy, having a damping effect upon application of force by the user to move the seta tray forward, and configured to release energy when a user relaxes to automatically move the seat tray rearward wherein the leg support is mounted in a manner that allows the leg support to pivot as the user experience extension tone, the leg support pivot point being positioned to be at the anatomical knee pivot point of the seated user, and the

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sliding mechanism configured with sufficiently low friction to enable the seated user to experience extension tone with little resulting resistance for forward movement of the seat tray and to pivot the leg support.

Harmon shows a seating system similar to that of Lanier et al. wherein the seating system has a base 152 (see Fig. 11), a seat tray (lower portion of 154), and a seat back 164 pivotally mounted relative to the seat tray at a seat back pivot point, and a lock mechanism 162 supported with respect to the base for locking the seat back in a fixed position with respect to the base. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the seating system of Lanier et al. such that the seat back is pivotally mounted relative to the seat tray at a seat back pivot point positioned at the anatomical hip point of a seated user, and a locking mechanism supported with respect to the base for locking the seat back in a fixed position with respect to the base, such as the seating system disclosed by Harmon. One would have been motivated to make such a modification in view of the suggestion in Harmon that the pivotally mounted seat back configuration allows the seat back to be adjusted and held in place.

***Allowable Subject Matter***

8. Claims 26 and 27 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

9. Applicant's arguments filed 27 July 2006 have been fully considered but they are not persuasive. Applicant argues that Markwald fails to teach a sliding mechanism mounting the seat tray for forward and rearward movement in a single plane. However, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. While Markwald teaches that the seat tray tilts upon fully extension by virtue of the fact the seat back is attached to frame 4 (see Fig. 1), Markland nevertheless teaches the seat tray is mounted for forward and rearward sliding movement in a single plane when the seat tray and sliding mechanism are only slightly adjusted in the forward or rearward direction. Applicant surely would agree that if the seat tray of Markland adjusted forward 2 cm from the orientation shown in Figure 1 then the seat tray would remain in a single plane.

While Markland does not shown the seated user positioned in the seating system, the pivot point for the seat back inherently is positioned at the anatomical hip of a user and the pivot point for the leg support inherently is positioned at the anatomical knee of the user. These pivot point positionings are necessary characteristic of any traveling seat of a wheelchair.

Because Markland teaches a seat tray and pivot points meeting the functional language of claims 20 and 22, the rejection of claims 3, 4, and 20-23 as being anticipated by Markland is maintained.



With respect to the rejection of claims 6, 14, 15, 24, and 25 as being unpatentable over Markland in view of Dodge, Applicant argues that the combination fails to teach downward movement of a seat back support member can cause a seat tray to slide forward with respect to a base. As best understood, it appears Applicant is citing insufficiencies of the individual references. However, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. Markland clearly teaches that downward movement of the seat back causes forward movement of the seat tray, and Dodge teaches a back support member and a locking mechanism wherein downward movement of the back support member in a substantially vertical direction causes the seat back to pivot at the seat tray to recline the seat back. As the combination of the references teaches all the limitations of claims 6, 14, 15, 24, and 25, the rejection of these claims is maintained.

### ***Conclusion***

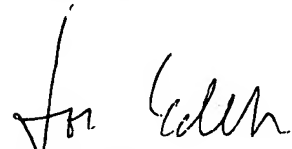
10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph F. Edell whose telephone number is (571) 272-6858. The examiner can normally be reached on Mon.-Fri. 8:30am-5:00pm.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

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you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "Joe Edell".

Joe Edell

April 26, 2007